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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS VALDEZ,

Defendant and Appellant.

C042489

(Super. Ct. No.  
NCR57169)

Following the denial of his motion to suppress evidence (Pen. Code, § 1538.5), defendant Jose Luis Valdez pleaded guilty to the manufacture of methamphetamine (Health & Saf. Code, § 11379.6, subd. (a) -- count I), possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a) -- count II), and possession of ammunition by a felon (Pen. Code, § 12316, subd. (b)(1) -- count III), and admitted a prior strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

Sentenced to state prison for 16 years eight months, defendant appeals, contending that, for various reasons, the

court erred in denying his suppression motion. We disagree and shall affirm the judgment.

#### **FACTS FROM SUPPRESSION HEARING**

California Department of Justice Special Agent Victor Lacey had "investigated hundreds upon hundreds of methamphetamine cases" and had been involved in "over 100 methamphetamine laboratory investigations." He had been to "many, many labs that have exploded" or "caught on fire." He also knew that many of the chemicals used in manufacturing methamphetamine are carcinogenic and poisonous, and that many people involved in the manufacturing process have died because of their exposure to the chemicals.

On December 20, 2001, a team of law enforcement officers went to a property in Corning to investigate a tip that methamphetamine was being manufactured and sold there. The property was a rural parcel of about two acres, upon which were two mobile home trailers situated in an east-west direction about 30 feet apart.

Lacey and some of the officers approached the west trailer while other officers approached the east trailer. When Lacey got within eight to 10 feet of the west trailer's front door, he detected "an overwhelming odor of methamphetamine being manufactured." Having observed children's toys and many vehicles on the property, Lacey radioed the entire team to secure the premises, meaning they were to conduct a search for people and remove them to a safe area.

Lacey and his team continued into the west trailer at the same time the other officers entered the east trailer. Lacey's team found evidence that methamphetamine had been manufactured, namely, a large amount of chemical contamination consisting of chemicals spilled on the floor and staining the walls. However, no active laboratory was found, only the "remnants" of one. Inside the east trailer, the officers found defendant, whom they removed, as well as chemicals used to manufacture methamphetamine. After securing the trailers, Lacey sent two officers to obtain a search warrant.

Defendant testified he lived in the east trailer.

The court denied defendant's motion to suppress, finding that exigent circumstances justified Agent Lacey's warrantless entry into the trailers.

### **DISCUSSION**

It is a fundamental principle of constitutional law that searches and "seizures inside a man's house without warrant are per se unreasonable" (*Coolidge v. New Hampshire* (1971) 403 U.S. 443, 477-478 [29 L.Ed.2d 564, 589-590]) and thus forbidden, unless they fall within one of the "'carefully delineated'" exceptions to the Fourth Amendment warrant clause (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 749-50 [80 L.Ed.2d 732, 742-743]). The requirement of a warrant insures that a neutral judicial officer determines whether the police have probable cause to conduct a search. As the Supreme Court has often explained, "the placement of this checkpoint between the Government and the citizen implicitly acknowledges that an

'officer engaged in the often competitive enterprise of ferreting out crime,' [citation], may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interests in protecting his own liberty and the privacy of his home." (*Steagald v. United States* (1981) 451 U.S. 204, 212 [68 L.Ed.2d 38, 46].)

Where evidence is obtained by an officer's warrantless entry into a residence, the People bear the burden of proving the entry was justified. (*People v. Duncan* (1986) 42 Cal.3d 91, 97 (*Duncan*).) The existence of exigent circumstances constitutes one such justification. (*Ibid.*) "The exigent circumstance exception to the search warrant requirement consists of both objective and subjective components." (*People v. Snead* (1991) 1 Cal.App.4th 380, 385.) There must exist ""an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property . . . ." [Citation.] The action must be 'prompted by the motive of preserving life or property and [must] reasonably appear[] to the actor to be necessary for that purpose.'" (*Ibid.*)

Defendant argues the exigent circumstances exception may not be invoked here because, objectively viewed, the facts do not establish an imminent danger to life or property in the trailer he occupied and, in any event, the officers did not subjectively believe their entry was required to protect life or property. We are not persuaded by either argument.

## I

Defendant concedes that where an officer has reasonable cause to believe a methamphetamine laboratory is currently in operation within a residence, the known dangers associated with such activity constitute an exigent circumstance permitting the officer's warrantless entry. (See, e.g., *People v. Messina* (1985) 165 Cal.App.3d 937, 942-943, holding that the known dangers associated with a methamphetamine laboratory's "being operated" in a residence constitute an exigent circumstance permitting an officer's warrantless entry to protect public safety; on the dangers of methamphetamine manufacture generally, see *People v. James* (1998) 62 Cal.App.4th 244.)

However, defendant argues no exigent circumstance exists where, as here, an officer is unable to determine from an odor he detects outside the residence whether the laboratory within is in actual operation.<sup>1</sup> He cites *Duncan, supra*, 42 Cal.3d 91 and *U.S. v. Warner* (9th Cir. 1988) 843 F.2d 401 (*Warner*) for the proposition that the presence of dangerous chemicals, without more, cannot constitute an exigent circumstance. *Warner* is

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<sup>1</sup> Agent Lacey testified that the odor of methamphetamine being manufactured is different from the odor of the methamphetamine that is produced, and that even after the "cook is gone," the odor from the cook remains because it "permeates the walls and carpeting and everything else." The odor Lacey detected was that associated with the manufacture of methamphetamine. Hence, defendant concludes, by Lacey's own testimony he was unable to determine from the odor whether the lab was currently active or inactive. We accept this conclusion.

factually distinguishable, and *Duncan* actually refutes defendant's position.

In *Duncan*, officers investigating a burglary in progress at the defendant's residence discovered an illicit drug laboratory, left the residence, and called vice control Officer Gremminger and informed him of their discovery. (*Duncan, supra*, 42 Cal.3d at pp. 95-96.) Gremminger arrived and from the defendant's driveway detected the strong odor of ether. Neither of the investigating officers, however, was able to tell Gremminger whether the laboratory was in "actual operation." (*Id.* at p. 96.) Gremminger entered "[t]o ascertain if the lab possibly was going to blow up, if something in there was cooking or needed immediate attention or if we had to vacate the neighborhood.'" (*Id.* at p. 105.)

In determining whether Gremminger's warrantless entry was justified by exigent circumstances, the court initially observed that "there is no absolute rule that can accommodate every warrantless entry into premises housing a drug laboratory. It is manifest that the emergency nature of each situation must be evaluated on its own facts." (*Duncan, supra*, 42 Cal.3d at p. 103.) Commenting on the situation where the odor of ether is detected but with no reliable evidence that a drug laboratory is in operation, the court noted "that ether has legitimate uses

and thus its smell alone does not provide probable cause for a search or exigent circumstances excusing a warrant."<sup>2</sup> (*Ibid.*)

On the other hand, the court acknowledged that, under certain circumstances, the odor of ether alone can evince an exigent circumstance as where the apparent concentration of the chemical, whether used for licit or illicit purposes, poses a risk of explosion or a health danger. Moreover, the odor of ether in combination with other facts suggesting the existence of a drug lab would constitute exigent circumstances because the "extremely volatile nature of chemicals, including ether, involved in the production of drugs such as PCP and methamphetamine creates a dangerous environment, especially when handled unprofessionally by residential manufacturers of illicit drugs." (*Duncan, supra*, 42 Cal.3d at p. 105.) In other words, Gremminger's reasonable fear for public safety justified his entry to determine whether the laboratory was or was not active.

The circumstances known to Agent Lacey prior to his warrantless entry into the west trailer are essentially indistinguishable from those that justified Officer Gremminger's warrantless entry. While just outside the west trailer, Lacey detected the distinctive chemical odor of methamphetamine that either was being or had been manufactured; Lacey knew of the danger such laboratories posed for explosion or inhalation of

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<sup>2</sup> This is one of the statements defendant relies upon for his claim that "the presence of dangerous chemicals, without more, cannot constitute an exigent circumstance."

their toxic fumes; and Lacey had observed vehicles and children's toys in the area of the trailers, giving rise to his fear that if the laboratory was in operation people might be in danger. Objectively viewed, Lacey's reasonable concern for the safety of potential victims justified his immediate warrantless entry into the west trailer to determine the status of the laboratory.

Nor is *Warner, supra*, 843 F.2d 401 of any aid to defendant. In *Warner*, the defendant's landlord provided an officer with a list of chemicals the defendant had stored in the defendant's garage, which the landlord said were giving off a pungent odor. The officer recognized that some of the chemicals were used to manufacture illicit drugs and had a potential for explosion. Although the officer was unable to detect the odor described by the landlord, possibly because he had hay fever, he made a warrantless entry of the garage and discovered chemicals used to manufacture methamphetamine. (*Warner, supra*, 843 F.2d at p. 402.)

In upholding the trial court's rejection of the government's claim that exigent circumstance justified the entry, the Court of Appeals stated: "Here there was no basis for believing that any illicit activity was actually taking place on the premises; no occupants were present. There was similarly no basis for believing that suspects or evidence might disappear. As the district court observed, in this case the only potential exigency was the inherent volatility of the



chemicals known to be in the garage."<sup>3</sup> (*Warner, supra*, 843 F.2d at p. 404.) With respect to the asserted volatility of the chemicals, the court noted that the "totality of the circumstances known to the officer at the time of the intrusion" controlled. (*Ibid.*) Those circumstances, which included the landlord's perception of fumes but lack of perception that an emergency existed and the officer's limited knowledge of the explosive potential of the chemicals, were not enough to present an exigency justifying a warrantless entry.

In contrast to *Warner*, Agent Lacey's detection of the distinctive methamphetamine odor emanating from the west trailer and his extensive knowledge of the dangers of the chemicals used in the manufacture of methamphetamine gave him probable cause to believe that illicit activity might actually be taking place, namely, that methamphetamine was being manufactured. Hence, *Warner* is factually distinguishable from the present case.

Defendant argues that even if there were probable cause to enter the west trailer, the observations made therein did not afford probable cause for entry into the east trailer. The contention misses the point. No probable cause was required for entry into the east trailer. Entry into both trailers, which were only 30 feet apart and *occurred at the same time*, was justified by the same exigent circumstance -- the danger to

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<sup>3</sup> Defendant also relies upon this quote to support his position that the mere presence of dangerous chemicals does not constitute an exigent circumstance.

persons and property engendered by a possibly active methamphetamine laboratory. Given their close proximity to each other, the danger was not confined to the west trailer.

## II

Defendant also argues that Agent Lacey's actions were inconsistent with a subjective belief that exigent circumstances existed because he never called the fire department or the hazardous waste team or wore protective clothing. The question of motive requires a review of the officer's testimony in light of the surrounding circumstances. Though we expect officers to be honest and forthright in describing their actions and mental states, we are not obligated to accept their explanations; we may reject implausible declarations of motive at odds with the underlying facts.

Lacey testified regarding his knowledge of the danger posed by chemicals used in manufacturing methamphetamine. He knew about the risk of death from exposure to chemicals and risk of fire and explosion. He testified that immediately upon detecting the methamphetamine odor outside the west trailer, he radioed the entire team to secure the area, which meant the officers were to conduct a search for people and remove them to safety. After this was accomplished, the windows of the trailers were opened to ventilate dangerous fumes.

Defendant proposes a variety of actions that a prudent public safety official might have taken to mitigate the risk of injury, including calls to the fire department and donning protective clothing. He insists that Lacey's failure to take

such actions evinces a nonchalance inconsistent with a motive to protect life. We disagree. The fact that Lacey acted without hesitation and did not take the precautions suggested by defendant prior to his entry into the west trailer shows no more than that his immediate concern was the possibility that others, including children, might be endangered because of the presence of an active methamphetamine laboratory. Thus, instead of demonstrating Lacey's indifference, the evidence supports the trial court's implied finding that Lacey believed an exigent circumstance existed.

### **III**

Our conclusion that the trial court properly determined exigent circumstances justified the warrantless entries at issue herein makes it unnecessary for us to address defendant's claims that the trial court erred in its "other reasons" for justifying the entries.

### **DISPOSITION**

The judgment is affirmed.

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RAYE, J.

We concur:

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SCOTLAND, P.J.

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ROBIE, J.